UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BRIAN BILLINGSLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:13CV819 HEA
	)	
ST. JOSEPH HEALTH CENTER, et al.,	)	
	)	
Defendants,	)	

OPINION, MEMORANDUM AND ORDER

Defendants move to dismiss, arguing that plaintiff's excessive force claims under 42 U.S.C. § 1983 fail as a matter of law because he is civilly committed. The motion is denied.

Plaintiff brought this action under 42 U.S.C. § 1983. He alleges that he suffers from schizophrenia and was admitted to St. Joseph Health Center for treatment. He acted out, and hospital personnel called the police. Plaintiff claims that the defendant police officers tazed him, kicked him, and maced him in violation of his Eighth and Fourteenth Amendment rights.

Defendants move to dismiss, arguing that the Eighth Amendment does not apply to non-prisoners, and therefore, all of plaintiff's claims fail as a matter of law.

Because plaintiff was civilly committed when the incident occurred, his relevant constitutional rights arise under the Due Process Clause of the Fourteenth Amendment. Andrews v. Neer, 253 F.3d 1052, 1061 (8th Cir. 2001). The Due Process Clause protects civil detainees "from the use of force that amounts to punishment." Graham v. Connor, 490 U.S. 386, 395 n. 10 (1989). "[T]he Due Process Clause affords [civil] detainees at least as much protection as the Eighth Amendment provides to convicted prisoners." Edwards v. Byrd, --- F.3d ---, 2014 WL 1622795 (8th Cir. 2014).

While plaintiff's cause of action does not arise under the Eighth Amendment, his claims are properly construed under the Fourteenth. Plaintiff's allegations of abuse by defendants raise a question as to whether the use of force amounted to punishment, rather than reasonable force necessary to quell the situation. As a result, the motion to dismiss is denied.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to dismiss [ECF No. 20] is **DENIED**.

Dated this <u>28th</u> day of <u>April</u>, 2014.

              HENRY EDWARD AUTREY
            UNITED STATES DISTRICT JUDGE